

JONATHAN E. NUECHTERLEIN

General Counsel

GREGORY A. ASHE

BRIAN SHULL

PETER LAMBERTON

Federal Trade Commission

600 Pennsylvania Avenue NW

Washington, DC 20850

Telephone: 202-326-3719 (Ashe)

Telephone: 202 -326-3720 (Shull)

Telephone: 202-326-3274 (Lamberton)

Facsimile: 202-326-3768

Email: gashe@ftc.gov, bshull@ftc.gov, plamberton@ftc.gov

DANIEL G. BOGDEN

United States Attorney

BLAINE T. WELSH

Assistant United States Attorney

Nevada Bar No. 4790

333 Las Vegas Blvd. South, Suite 5000

Las Vegas, Nevada 89101

Phone: (702) 388-6336

Facsimile: (702) 388-6787

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

SEQUOIA ONE, LLC, a Wyoming limited liability company, **GEN X MARKETING GROUP, LLC**, a Florida limited liability company, **JASON A. KOTZKER, THERESA D. BARTHOLOMEW, JOHN E. BARTHOLOMEW, JR., and PAUL T. MCDONNELL,**

Defendants.

Case No. 2:15-cv-01512-JCM-CWH

**STIPULATION TO ENTER FINAL
ORDER FOR PERMANENT
INJUNCTION AND
SETTLEMENT OF CLAIMS AS
TO DEFENDANT PAUL
MCDONNELL**

1 Plaintiff, the Federal Trade Commission (“FTC”), filed its Complaint for Permanent
2 Injunction and Other Equitable Relief (“Complaint”) for a permanent injunction and other
3 equitable relief in this matter, pursuant to Section 13(b) of the Federal Trade Commission Act
4 (“FTC Act”), 15 U.S.C. § 53(b). The FTC and Defendant Paul McDonnell stipulate to the entry
5 of this Final Order for Permanent Injunction and Settlement of Claims (“Order”) to resolve all
6 matters in dispute in this action between them. The proposed order is attached hereto.
7

8 FINDINGS

9 By stipulation of the parties, the Court finds as follows:

- 10 1. This is an action by the FTC instituted under Section 13(b) of the FTC Act, 15 U.S.C. §
11 53(b). The Complaint charges that Defendants participated in unfair acts or practices in
12 violation of Section 5 of the FTC Act, 15 U.S.C. § 45, in connection with the disclosure
13 of consumers’ sensitive personal information. The Complaint seeks both permanent
14 injunctive relief and equitable monetary relief for Defendants’ alleged unfair acts or
15 practices as alleged therein.
16
- 17 2. The FTC has the authority under Section 13(b) of the FTC Act to seek the relief it has
18 requested, and the Complaint states a claim upon which relief can be granted against the
19 Stipulating Defendant.
20
- 21 3. The Stipulating Defendant has waived service of the summons and Complaint.
- 22 4. This Court has jurisdiction over the subject matter of this case and has jurisdiction over
23 the Stipulating Defendant. Venue in the District of Nevada is proper.
24
- 25 5. The activities of the Stipulating Defendant, as alleged in the Complaint, are in or
26 affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
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- 1 6. The Stipulating Defendant neither admits nor denies any of the allegations in the
2 Complaint, except as specifically stated in this Order. Only for purposes of this action,
3 the Stipulating Defendant admits the facts necessary to establish jurisdiction.
- 4 7. The Stipulating Defendant waives all rights to appeal or otherwise challenge or contest
5 the validity of this Order. The Stipulating Defendant also waives any claim that he may
6 have held under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the
7 prosecution of this action to the date of this Order. The FTC and the Stipulating
8 Defendant each shall bear its own costs and attorneys' fees.
- 9 8. This action and the relief awarded herein are in addition to, and not in lieu of, other
10 remedies as may be provided by law, including both civil and criminal remedies.
- 11 9. Entry of this Order is in the public interest.

12 DEFINITIONS

13 For the purpose of this Order, the following definitions apply:

- 14 1. **"Corporate Defendants"** means Sequoia One, LLC and Gen X Marketing Group, LLC,
15 and their successors and assigns.
- 16 2. **"Defendants"** means all of the Individual Defendants and the Corporate Defendants,
17 individually, collectively, or in any combination.
- 18 3. **"Financial product or service"** means any product, service, plan, or program
19 represented, expressly or by implication, to: (a) provide any consumer, arrange for any
20 consumer to receive, or assist any consumer in receiving, a loan or other extension of
21 credit; (b) provide any consumer, arrange for any consumer to receive, or assist any
22 consumer in receiving, credit, debit, or stored value cards; (c) improve, repair, or arrange
23 to improve or repair, any consumer's credit record, credit history, or credit rating; or (d)
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1 provide advice or assistance to improve any consumer's credit record, credit history, or
2 credit rating.

3 4. **"Individual Defendants"** means Jason A. Kotzker, John E. Bartholomew, Jr., Theresa D.
4 Bartholomew, and Paul T. McDonnell.

5 5. **"Lender"** means any Person who provides or issues loans or other extensions of credit.

6 6. **"Person"** means a natural person, organization, or other legal entity, including a
7 corporation, partnership, proprietorship, association, cooperative, or any other group or
8 combination acting as an entity.
9

10 7. **"Sensitive Personal Information"** means any of the following about a consumer: (a)
11 Social Security number; (b) financial institution account number; (c) credit or debit card
12 information; or (d) any other information by which a consumer's financial account can be
13 accessed, or by which a consumer might be charged for goods or services, including
14 through third parties such as telecommunications carriers.
15

16 8. **"Stipulating Defendant"** means Paul T. McDonnell and by whatever names he might be
17 known.
18

19 ORDER

20 PROHIBITION ON THE DISCLOSURE OF SENSITIVE PERSONAL INFORMATION

21 I. **IT IS THEREFORE ORDERED** that the Stipulating Defendant is hereby permanently
22 restrained and enjoined from, or assisting others engaged in, selling, transferring, or
23 otherwise disclosing the Sensitive Personal Information of a consumer (other than the
24 Stipulating Defendant or his immediate family) to any Person; *provided, however*, that
25 this Section I shall not prohibit the Stipulating Defendant from transferring or otherwise
26 disclosing a consumer's Sensitive Personal Information to the extent necessary to process
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1 payment for any product or service sold by the Stipulating Defendant directly to that
2 consumer and for which the Stipulating Defendant has the consumer's express, informed
3 consent for that sale.

4 **PROHIBITED MISREPRESENTATIONS RELATING TO FINANCIAL RELATED**
5 **PRODUCTS OR SERVICES**

6 **II. IT IS FURTHER ORDERED** that the Stipulating Defendant and his officers, agents,
7 employees, and attorneys, and those Persons or entities in active concert or participation
8 with any of them who receive actual notice of this Order by personal service, facsimile
9 transmission, email, or otherwise, whether acting directly or indirectly, in connection
10 with the advertising, marketing, promotion, offering for sale, or selling of any Financial
11 product or service, are hereby permanently restrained and enjoined from misrepresenting
12 or assisting others in misrepresenting, expressly or by implication:

14 A. The likelihood that any Person will obtain a loan or other extension of credit; and

16 B. The terms or rates that are available for any loan or other extension of credit.

17 **PROHIBITED MISREPRESENTATIONS RELATING TO ALL PRODUCTS OR**
18 **SERVICES**

19 **III. IT IS FURTHER ORDERED** that the Stipulating Defendant and his officers, agents,
20 employees, and attorneys, and those Persons or entities in active concert or participation
21 with any of them who receive actual notice of this Order by personal service, facsimile
22 transmission, email, or otherwise, whether acting directly or indirectly, in connection
23 with the advertising, marketing, promotion, offering for sale, or selling of any product or
24 service, are hereby permanently restrained and enjoined from misrepresenting or assisting
25 others in misrepresenting, expressly or by implication:
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- 1 A. That a consumer has authorized or otherwise consented to the purchase of a
2 product or service;
- 3 B. That any particular outcome or result from a product or service is guaranteed,
4 assured, highly likely or probable, or very likely or probable;
- 5 C. The nature or terms of any refund, cancellation, exchange, or repurchase policy,
6 including, but not limited to, the likelihood of a consumer obtaining a full or
7 partial refund, or the circumstances in which a full or partial refund will be
8 provided to the consumer; and
- 9 D. Any other fact material to consumers concerning any product or service, such as:
10 the total costs; any material restrictions, limitations, or conditions; or any material
11 aspect of its performance, efficacy, nature, or central characteristics.
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13

14 **CONSUMER INFORMATION**

15 **IV. IT IS FURTHER ORDERED** that the Stipulating Defendant and his officers, agents,
16 employees, and attorneys, and those Persons or entities in active concert or participation
17 with any of them who receive actual notice of this Order by personal service, facsimile
18 transmission, email, or otherwise, whether acting directly or indirectly, are permanently
19 restrained and enjoined from directly or indirectly:
20

- 21 A. Failing to provide sufficient customer information to enable the FTC to
22 administer efficiently consumer redress. If a representative of the FTC requests in
23 writing any information related to redress, the Stipulating Defendant must provide
24 it, in the form prescribed by the FTC, within 14 days.
- 25 B. Disclosing, using, or benefitting from customer information, including the name,
26 address, telephone number, email address, social security number, other
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1 identifying information, or any data that enables access to a customer's account
2 (including a credit card, bank account, or other financial account) that any
3 Defendant obtained prior to entry of this Order in connection with the marketing
4 or offering of payday loans or other extensions of credit.

- 5 C. Failing to destroy such customer information in all forms in their possession,
6 custody, or control within thirty (30) days after receipt of written direction to do
7 so from a representative of the FTC.
8

9 *Provided, however,* that customer information need not be disposed of, and may be
10 disclosed, to the extent requested by a government agency or required by a law,
11 regulation, or court order.
12

13 **MONETARY JUDGMENT AND SUSPENSION**

14 **V. IT IS FURTHER ORDERED** that:

- 15 A. Judgment in the amount of THREE MILLION, SEVEN HUNDRED SEVENTY-
16 THREE THOUSAND, ONE HUNDRED AND FORTY-FOUR DOLLARS
17 (\$3,773,144) is entered in favor of the FTC against the Stipulating Defendant,
18 jointly and severally with any other Defendant in this action against whom
19 judgment may be entered, as equitable monetary relief.
20

- 21 B. The judgment is suspended as to the Stipulating Defendant, subject to the
22 Subsections below.

- 23 C. The FTC's agreement to the suspension of the judgment is expressly premised upon
24 the truthfulness, accuracy, and completeness of the Stipulating Defendant's sworn
25 financial statements and related documents (collectively, "financial
26 representations") submitted to the FTC, namely the Financial Statement of
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1 Individual Defendant Paul McDonnell signed on April 27, 2015, including the
2 attachments.

3 D. The suspension of the judgment will be lifted as to the Stipulating Defendant if,
4 upon motion by the FTC, the Court finds that the Stipulating Defendant failed to
5 disclose any material asset, materially misstated the value of any asset, or made any
6 other material misstatement or omission in the financial representations identified
7 above.

8
9 E. If the suspension of the judgment is lifted, the judgment becomes immediately due
10 as to the Stipulating Defendant in the amount specified in Subsection A above
11 (which the parties stipulate only for purposes of this Section represents the
12 consumer injury alleged in the Complaint), less any payment previously made
13 pursuant to this Section, plus interest computed from the date of entry of this Order.
14

15 F. All money paid to the FTC pursuant to this Order may be deposited into a fund
16 administered by the FTC or its designee to be used for equitable relief, including
17 consumer redress and any attendant expenses for the administration of any redress
18 fund. If a representative of the FTC decides that direct redress to consumers is
19 wholly or partially impracticable or money remains after redress is completed, the
20 FTC may apply any remaining money for such other equitable relief (including
21 consumer information remedies) as the FTC determines to be reasonably related to
22 the Stipulating Defendant's practices alleged in the Complaint. Any money not
23 used for such equitable relief is to be deposited to the United States Treasury as
24 equitable disgorgement. Defendants have no right to challenge any actions the FTC
25 or its representatives may take pursuant to this Subsection.
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- 1 G. The Stipulating Defendant relinquishes dominion and all legal and equitable right,
2 title, and interest in all assets transferred pursuant to this Order and may not seek
3 the return of any assets.
- 4 H. The facts alleged in the Complaint will be taken as true, without further proof, in
5 any subsequent civil litigation by or on behalf of the FTC, including in a proceeding
6 to enforce its rights to any payment or monetary judgment pursuant to this Order,
7 such as a nondischargeability complaint in any bankruptcy case.
- 8 I. The facts alleged in the Complaint establish all elements necessary to sustain an
9 action by the FTC pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11
10 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for such
11 purposes.
- 12 J. The Stipulating Defendant acknowledges that his Taxpayer Identification Numbers
13 (Social Security Numbers or Employer Identification Numbers), which the
14 Stipulating Defendant previously submitted to the FTC, may be used for collecting
15 and reporting on any delinquent amount arising out of this Order, in accordance
16 with 31 U.S.C. § 7701.
- 17 K. Upon written request from a representative of the FTC, any consumer reporting
18 agency may furnish consumer reports concerning the Stipulating Defendant,
19 pursuant to Section 604(a)(1) of the Fair Credit Reporting Act, 15 U.S.C. §
20 1681b(a)(1).

21 COOPERATION

22 **VI. IT IS FURTHER ORDERED** the Stipulating Defendant must fully cooperate with
23 representatives of the FTC in this case and in any investigation related to or associated
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1 with the transactions or the occurrences that are the subject of the Complaint. The
2 Stipulating Defendant must provide truthful and complete information, evidence, and
3 testimony. The Stipulating Defendant must appear for interviews, discovery, hearings,
4 trials, and any other proceedings that a FTC representative may reasonably request upon
5 5 days written notice, or other reasonable notice, at such places and times as a FTC
6 representative may designate, without the service of a subpoena.
7

8 **ORDER ACKNOWLEDGMENTS**

9 **VII. IT IS FURTHER ORDERED** that the Stipulating Defendant obtain acknowledgments
10 of receipt of this Order:

- 11 A. The Stipulating Defendant, within 7 days of entry of this Order, must submit to
12 the FTC an acknowledgment of receipt of this Order sworn under penalty of
13 perjury.
14
- 15 B. For 5 years after entry of this Order, the Stipulating Defendant for any business
16 that such Defendant, individually or collectively with any other Defendant, is the
17 majority owner or controls directly or indirectly, must deliver a copy of this Order
18 to: (1) all principals, officers, directors, and LLC managers and members; (2) all
19 employees, agents, and representatives who participate in conduct related to the
20 subject matter of the Order; and (3) any business entity resulting from any change
21 in structure as set forth in the Section titled Compliance Reporting. Delivery must
22 occur within 7 days of entry of this Order for current personnel. To all others,
23 delivery must occur before they assume their responsibilities.
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- 1 C. From each individual or entity to which the Stipulating Defendant delivered a
2 copy of this Order, the Stipulating Defendant must obtain, within 30 days, a
3 signed and dated acknowledgment of receipt of this Order.

4 **COMPLIANCE REPORTING**

5 **VIII. IT IS FURTHER ORDERED** that the Stipulating Defendant make timely submissions
6 to the FTC:
7

- 8 A. One year after entry of this Order, the Stipulating Defendant must submit a
9 compliance report, sworn under penalty of perjury:

- 10 1. The Stipulating Defendant must: (a) identify the primary physical, postal,
11 and email address and telephone number, as designated points of contact,
12 which representatives of the FTC may use to communicate with the
13 Stipulating Defendant; (b) identify all of the Stipulating Defendant's
14 businesses by all of their names, telephone numbers, and physical, postal,
15 email, and Internet addresses; (c) describe the activities of each business,
16 including the products and services offered, the means of advertising,
17 marketing, and sales, and the involvement of any other Defendant (which
18 the Stipulating Defendant must describe if he knows or should know due
19 to his own involvement); (d) describe in detail whether and how the
20 Stipulating Defendant is in compliance with each Section of this Order;
21 and (e) provide a copy of each Order Acknowledgment obtained pursuant
22 to this Order, unless previously submitted to the FTC;
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24 2. Additionally, the Stipulating Defendant must: (a) identify all telephone
25 numbers and physical, postal, email, and Internet addresses, including all
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1 residences; (b) identify all business activities, including any business for
2 which the Stipulating Defendant performs services whether as an
3 employee or otherwise and any entity in which the Stipulating Defendant
4 has any ownership interest; and (c) describe in detail the Stipulating
5 Defendant's involvement in each such business, including title, role,
6 responsibilities, participation, authority, control, and any ownership.
7

8 B. For 10 years following entry of this Order, the Stipulating Defendant must submit
9 a compliance notice, sworn under penalty of perjury, within 14 days of any
10 change in the following:

- 11 1. The Stipulating Defendant must report any change in: (a) any designated
12 point of contact; or (b) the structure of any entity that the Stipulating
13 Defendant has any ownership interest in or controls directly or indirectly
14 that may affect compliance obligations arising under this Order, including:
15 creation, merger, sale, or dissolution of the entity or any subsidiary,
16 parent, or affiliate that engages in any acts or practices subject to this
17 Order.
18
19 2. Additionally, the Stipulating Defendant must report any change in: (a)
20 name, including aliases or fictitious name, or residence address; or (b) title
21 or role in any business activity, including any business for which the
22 Stipulating Defendant performs services whether as an employee or
23 otherwise and any entity in which the Stipulating Defendant has any
24 ownership interest, and identify the name, physical address, and Internet
25 address of the business entity.
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- 1 C. The Stipulating Defendant must submit to the FTC notice of the filing of any
2 bankruptcy petition, insolvency proceeding, or similar proceeding by or against
3 the Stipulating Defendant within 14 days of its filing.
- 4 D. Any submission to the FTC required by this Order to be sworn under penalty of
5 perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by
6 concluding: “I declare under penalty of perjury under the laws of the United
7 States of America that the foregoing is true and correct. Executed on:_____” and
8 supplying the date, signatory’s full name, title (if applicable), and signature.
- 9 E. Unless otherwise directed by a FTC representative in writing, all submissions to
10 the FTC pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by
11 overnight courier (not the U.S. Postal Service) to: Associate Director for
12 Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600
13 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin:
14 *FTC v. Sequoia One, et al.*

15 **RECORDKEEPING**

- 16 **IX. IT IS FURTHER ORDERED** that the Stipulating Defendant must create certain records
17 for 10 years after entry of the Order, and retain each such record for 5 years.
18 Specifically, the Stipulating Defendant for any business that the Stipulating Defendant,
19 individually or collectively with any other Defendant, is a majority owner or controls
20 directly or indirectly, must create and maintain the following records:
- 21 A. Proof of consumers’ authorization to have their sensitive personal information
22 transferred or disclosed, which includes the consumer’s name, phone number, and
23 address; and the manner, time, place, and method of the authorization;
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- B. Accounting records showing the revenues from all goods or services sold, all costs incurred in generating those revenues, and the resulting net profit or loss;
- C. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name, addresses, and telephone numbers; job title or position; dates of service; and, if applicable, the reason for termination;
- D. Records of all consumer complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;
- E. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the FTC; and
- F. A copy of each advertisement or other marketing material.

COMPLIANCE MONITORING

X. IT IS FURTHER ORDERED that, for the purpose of monitoring the Stipulating Defendant's compliance with this Order, including the financial representations upon which part of the judgment was suspended and any failure to transfer any assets as required by this Order:

- A. Within 14 days of receipt of a written request from a representative of the FTC, each Stipulating Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents, for inspection and copying. The FTC is also authorized to obtain discovery, without further leave of Court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

1 B. For matters concerning this Order, the FTC is authorized to communicate directly
2 with each Stipulating Defendant. The Stipulating Defendant must permit
3 representatives of the FTC to interview any employee or other person affiliated
4 with the Stipulating Defendant who has agreed to such an interview. The person
5 interviewed may have counsel present.

6 C. The FTC may use all other lawful means, including posing, through its
7 representatives, as consumers, suppliers, or other individuals or entities, to the
8 Stipulating Defendant or any individual or entity affiliated with the Stipulating
9 Defendant, without the necessity of identification or prior notice. Nothing in this
10 Order limits the FTC's lawful use of compulsory process, pursuant to Sections 9
11 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.
12
13

14 ENTRY OF JUDGMENT

15 **XI. IT IS FURTHER ORDERED** that there is no just reason for delay of entry of this
16 judgment, and that, pursuant to Federal Rule of Civil Procedure 54(b), the Clerk
17 immediately shall enter this Order as a final judgment as to defendant Paul McDonnell.
18

19 RETENTION OF JURISDICTION

20 **XII. IT IS FURTHER ORDERED** that this Court retains jurisdiction of this matter for
21 purposes of construction, modification, and enforcement of this Order.
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IT IS SO STIPULATED:

PAUL MCDONNELL,
Defendant Pro Se

GREGORY A. ASHE
BRIAN SHULL
PETER LAMBERTON
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20850
Telephone: 202-326-3719 (Ashe)
Telephone: 202-326-3720 (Shull)
Telephone: 202-326-3274 (Lamberton)
Facsimile: 202-326-3768
Email: gashe@ftc.gov, bshull@ftc.gov,
plamberton@ftc.gov,

BLAINE T. WELSH
Assistant United States Attorney
Nevada Bar No. 4790
333 Las Vegas Blvd. South, Suite 5000
Las Vegas, Nevada 89101
Phone: (702) 388-6336
Facsimile: (702) 388-6787

Attorneys for Plaintiff
FEDERAL TRADE COMMISSION

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

SEQUOIA ONE, LLC, a Wyoming limited liability company, **GEN X MARKETING GROUP, LLC**, a Florida limited liability company, **JASON A. KOTZKER, THERESA D. BARTHOLOMEW, JOHN E. BARTHOLOMEW, JR., and PAUL T. MCDONNELL,**

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**STIPULATED FINAL
ORDER FOR PERMANENT
INJUNCTION AND
SETTLEMENT OF CLAIMS AS
TO DEFENDANT PAUL
MCDONNELL**

Plaintiff, the Federal Trade Commission (“FTC”), filed its Complaint for Permanent Injunction and Other Equitable Relief (“Complaint”) for a permanent injunction and other equitable relief in this matter, pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b). The FTC and Defendant Paul McDonnell stipulate to the entry of this Final Order for Permanent Injunction and Settlement of Claims (“Order”) to resolve all matters in dispute in this action between them.

FINDINGS

By stipulation of the parties, the Court finds as follows:

1. This is an action by the FTC instituted under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b). The Complaint charges that Defendants participated in unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, in connection with the disclosure of consumers’ sensitive personal information. The Complaint seeks both permanent

injunctive relief and equitable monetary relief for Defendants' alleged unfair acts or practices as alleged therein.

2. The FTC has the authority under Section 13(b) of the FTC Act to seek the relief it has requested, and the Complaint states a claim upon which relief can be granted against the Stipulating Defendant.
3. The Stipulating Defendant has waived service of the summons and Complaint.
4. This Court has jurisdiction over the subject matter of this case and has jurisdiction over the Stipulating Defendant. Venue in the District of Nevada is proper.
5. The activities of the Stipulating Defendant, as alleged in the Complaint, are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
6. The Stipulating Defendant neither admits nor denies any of the allegations in the Complaint, except as specifically stated in this Order. Only for purposes of this action, the Stipulating Defendant admits the facts necessary to establish jurisdiction.
7. The Stipulating Defendant waives all rights to appeal or otherwise challenge or contest the validity of this Order. The Stipulating Defendant also waives any claim that he may have held under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of this Order. The FTC and the Stipulating Defendant each shall bear its own costs and attorneys' fees.
8. This action and the relief awarded herein are in addition to, and not in lieu of, other remedies as may be provided by law, including both civil and criminal remedies.
9. Entry of this Order is in the public interest.

DEFINITIONS

For the purpose of this Order, the following definitions apply:

- 1 1. **“Corporate Defendants”** means Sequoia One, LLC and Gen X Marketing Group, LLC,
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- 3 2. **“Defendants”** means all of the Individual Defendants and the Corporate Defendants,
4 individually, collectively, or in any combination.
- 5 3. **“Financial product or service”** means any product, service, plan, or program
6 represented, expressly or by implication, to: (a) provide any consumer, arrange for any
7 consumer to receive, or assist any consumer in receiving, a loan or other extension of
8 credit; (b) provide any consumer, arrange for any consumer to receive, or assist any
9 consumer in receiving, credit, debit, or stored value cards; (c) improve, repair, or arrange
10 to improve or repair, any consumer’s credit record, credit history, or credit rating; or (d)
11 provide advice or assistance to improve any consumer’s credit record, credit history, or
12 credit rating.
- 13 4. **“Individual Defendants”** means Jason A. Kotzker, John E. Bartholomew, Jr., Theresa D.
14 Bartholomew, and Paul T. McDonnell.
- 15 5. **“Lender”** means any Person who provides or issues loans or other extensions of credit.
- 16 6. **“Person”** means a natural person, organization, or other legal entity, including a
17 corporation, partnership, proprietorship, association, cooperative, or any other group or
18 combination acting as an entity.
- 19 7. **“Sensitive Personal Information”** means any of the following about a consumer: (a)
20 Social Security number; (b) financial institution account number; (c) credit or debit card
21 information; or (d) any other information by which a consumer’s financial account can be
22 accessed, or by which a consumer might be charged for goods or services, including
23 through third parties such as telecommunications carriers.
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8. “**Stipulating Defendant**” means Paul T. McDonnell and by whatever names he might be known.

ORDER

PROHIBITION ON THE DISCLOSURE OF SENSITIVE PERSONAL INFORMATION

- I. IT IS THEREFORE ORDERED** that the Stipulating Defendant is hereby permanently restrained and enjoined from, or assisting others engaged in, selling, transferring, or otherwise disclosing the Sensitive Personal Information of a consumer (other than the Stipulating Defendant or his immediate family) to any Person; *provided, however*, that this Section I shall not prohibit the Stipulating Defendant from transferring or otherwise disclosing a consumer’s Sensitive Personal Information to the extent necessary to process payment for any product or service sold by the Stipulating Defendant directly to that consumer and for which the Stipulating Defendant has the consumer’s express, informed consent for that sale.

PROHIBITED MISREPRESENTATIONS RELATING TO FINANCIAL RELATED PRODUCTS OR SERVICES

- II. IT IS FURTHER ORDERED** that the Stipulating Defendant and his officers, agents, employees, and attorneys, and those Persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service, facsimile transmission, email, or otherwise, whether acting directly or indirectly, in connection with the advertising, marketing, promotion, offering for sale, or selling of any Financial product or service, are hereby permanently restrained and enjoined from misrepresenting or assisting others in misrepresenting, expressly or by implication:

- A. The likelihood that any Person will obtain a loan or other extension of credit; and
- B. The terms or rates that are available for any loan or other extension of credit.

PROHIBITED MISREPRESENTATIONS RELATING TO ALL PRODUCTS OR SERVICES

III. IT IS FURTHER ORDERED that the Stipulating Defendant and his officers, agents, employees, and attorneys, and those Persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service, facsimile transmission, email, or otherwise, whether acting directly or indirectly, in connection with the advertising, marketing, promotion, offering for sale, or selling of any product or service, are hereby permanently restrained and enjoined from misrepresenting or assisting others in misrepresenting, expressly or by implication:

- A. That a consumer has authorized or otherwise consented to the purchase of a product or service;
- B. That any particular outcome or result from a product or service is guaranteed, assured, highly likely or probable, or very likely or probable;
- C. The nature or terms of any refund, cancellation, exchange, or repurchase policy, including, but not limited to, the likelihood of a consumer obtaining a full or partial refund, or the circumstances in which a full or partial refund will be provided to the consumer; and
- D. Any other fact material to consumers concerning any product or service, such as: the total costs; any material restrictions, limitations, or conditions; or any material aspect of its performance, efficacy, nature, or central characteristics.

CONSUMER INFORMATION

IV. IT IS FURTHER ORDERED that the Stipulating Defendant and his officers, agents, employees, and attorneys, and those Persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service, facsimile

transmission, email, or otherwise, whether acting directly or indirectly, are permanently restrained and enjoined from directly or indirectly:

- A. Failing to provide sufficient customer information to enable the FTC to administer efficiently consumer redress. If a representative of the FTC requests in writing any information related to redress, the Stipulating Defendant must provide it, in the form prescribed by the FTC, within 14 days.
- B. Disclosing, using, or benefitting from customer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account) that any Defendant obtained prior to entry of this Order in connection with the marketing or offering of payday loans or other extensions of credit.
- C. Failing to destroy such customer information in all forms in their possession, custody, or control within thirty (30) days after receipt of written direction to do so from a representative of the FTC.

Provided, however, that customer information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by a law, regulation, or court order.

MONETARY JUDGMENT AND SUSPENSION

V. IT IS FURTHER ORDERED that:

- A. Judgment in the amount of THREE MILLION, SEVEN HUNDRED SEVENTY-THREE THOUSAND, ONE HUNDRED AND FORTY-FOUR DOLLARS (\$3,773,144) is entered in favor of the FTC against the Stipulating Defendant,

1 jointly and severally with any other Defendant in this action against whom
2 judgment may be entered, as equitable monetary relief.

3 B. The judgment is suspended as to the Stipulating Defendant, subject to the
4 Subsections below.

5 C. The FTC's agreement to the suspension of the judgment is expressly premised upon
6 the truthfulness, accuracy, and completeness of the Stipulating Defendant's sworn
7 financial statements and related documents (collectively, "financial
8 representations") submitted to the FTC, namely the Financial Statement of
9 Individual Defendant Paul McDonnell signed on April 27, 2015, including the
10 attachments.
11

12 D. The suspension of the judgment will be lifted as to the Stipulating Defendant if,
13 upon motion by the FTC, the Court finds that the Stipulating Defendant failed to
14 disclose any material asset, materially misstated the value of any asset, or made any
15 other material misstatement or omission in the financial representations identified
16 above.
17

18 E. If the suspension of the judgment is lifted, the judgment becomes immediately due
19 as to the Stipulating Defendant in the amount specified in Subsection A above
20 (which the parties stipulate only for purposes of this Section represents the
21 consumer injury alleged in the Complaint), less any payment previously made
22 pursuant to this Section, plus interest computed from the date of entry of this Order.
23

24 F. All money paid to the FTC pursuant to this Order may be deposited into a fund
25 administered by the FTC or its designee to be used for equitable relief, including
26 consumer redress and any attendant expenses for the administration of any redress
27
28

1 fund. If a representative of the FTC decides that direct redress to consumers is
2 wholly or partially impracticable or money remains after redress is completed, the
3 FTC may apply any remaining money for such other equitable relief (including
4 consumer information remedies) as the FTC determines to be reasonably related to
5 the Stipulating Defendant's practices alleged in the Complaint. Any money not
6 used for such equitable relief is to be deposited to the United States Treasury as
7 equitable disgorgement. Defendants have no right to challenge any actions the FTC
8 or its representatives may take pursuant to this Subsection.

9
10 G. The Stipulating Defendant relinquishes dominion and all legal and equitable right,
11 title, and interest in all assets transferred pursuant to this Order and may not seek
12 the return of any assets.

13
14 H. The facts alleged in the Complaint will be taken as true, without further proof, in
15 any subsequent civil litigation by or on behalf of the FTC, including in a proceeding
16 to enforce its rights to any payment or monetary judgment pursuant to this Order,
17 such as a nondischargeability complaint in any bankruptcy case.

18
19 I. The facts alleged in the Complaint establish all elements necessary to sustain an
20 action by the FTC pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11
21 U.S.C. § 523(a)(2)(A), and this Order will have collateral estoppel effect for such
22 purposes.

23
24 J. The Stipulating Defendant acknowledges that his Taxpayer Identification Numbers
25 (Social Security Numbers or Employer Identification Numbers), which the
26 Stipulating Defendant previously submitted to the FTC, may be used for collecting
27
28

1 and reporting on any delinquent amount arising out of this Order, in accordance
2 with 31 U.S.C. § 7701.

3 K. Upon written request from a representative of the FTC, any consumer reporting
4 agency may furnish consumer reports concerning the Stipulating Defendant,
5 pursuant to Section 604(a)(1) of the Fair Credit Reporting Act, 15 U.S.C. §
6 1681b(a)(1).
7

8 COOPERATION

9 **VI. IT IS FURTHER ORDERED** the Stipulating Defendant must fully cooperate with
10 representatives of the FTC in this case and in any investigation related to or associated
11 with the transactions or the occurrences that are the subject of the Complaint. The
12 Stipulating Defendant must provide truthful and complete information, evidence, and
13 testimony. The Stipulating Defendant must appear for interviews, discovery, hearings,
14 trials, and any other proceedings that a FTC representative may reasonably request upon
15 5 days written notice, or other reasonable notice, at such places and times as a FTC
16 representative may designate, without the service of a subpoena.
17

18 ORDER ACKNOWLEDGMENTS

19
20 **VII. IT IS FURTHER ORDERED** that the Stipulating Defendant obtain acknowledgments
21 of receipt of this Order:

- 22 A. The Stipulating Defendant, within 7 days of entry of this Order, must submit to
23 the FTC an acknowledgment of receipt of this Order sworn under penalty of
24 perjury.
25
26 B. For 5 years after entry of this Order, the Stipulating Defendant for any business
27 that such Defendant, individually or collectively with any other Defendant, is the
28

majority owner or controls directly or indirectly, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who participate in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within 7 days of entry of this Order for current personnel. To all others, delivery must occur before they assume their responsibilities.

- C. From each individual or entity to which the Stipulating Defendant delivered a copy of this Order, the Stipulating Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

COMPLIANCE REPORTING

VIII. IT IS FURTHER ORDERED that the Stipulating Defendant make timely submissions to the FTC:

- A. One year after entry of this Order, the Stipulating Defendant must submit a compliance report, sworn under penalty of perjury:
1. The Stipulating Defendant must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the FTC may use to communicate with the Stipulating Defendant; (b) identify all of the Stipulating Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the products and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant (which

1 the Stipulating Defendant must describe if he knows or should know due
2 to his own involvement); (d) describe in detail whether and how the
3 Stipulating Defendant is in compliance with each Section of this Order;
4 and (e) provide a copy of each Order Acknowledgment obtained pursuant
5 to this Order, unless previously submitted to the FTC;

- 6
7 2. Additionally, the Stipulating Defendant must: (a) identify all telephone
8 numbers and physical, postal, email, and Internet addresses, including all
9 residences; (b) identify all business activities, including any business for
10 which the Stipulating Defendant performs services whether as an
11 employee or otherwise and any entity in which the Stipulating Defendant
12 has any ownership interest; and (c) describe in detail the Stipulating
13 Defendant's involvement in each such business, including title, role,
14 responsibilities, participation, authority, control, and any ownership.
15

- 16 B. For 10 years following entry of this Order, the Stipulating Defendant must submit
17 a compliance notice, sworn under penalty of perjury, within 14 days of any
18 change in the following:
19

- 20 1. The Stipulating Defendant must report any change in: (a) any designated
21 point of contact; or (b) the structure of any entity that the Stipulating
22 Defendant has any ownership interest in or controls directly or indirectly
23 that may affect compliance obligations arising under this Order, including:
24 creation, merger, sale, or dissolution of the entity or any subsidiary,
25 parent, or affiliate that engages in any acts or practices subject to this
26 Order.
27
28

1 2. Additionally, the Stipulating Defendant must report any change in: (a)
2 name, including aliases or fictitious name, or residence address; or (b) title
3 or role in any business activity, including any business for which the
4 Stipulating Defendant performs services whether as an employee or
5 otherwise and any entity in which the Stipulating Defendant has any
6 ownership interest, and identify the name, physical address, and Internet
7 address of the business entity.
8

9 C. The Stipulating Defendant must submit to the FTC notice of the filing of any
10 bankruptcy petition, insolvency proceeding, or similar proceeding by or against
11 the Stipulating Defendant within 14 days of its filing.
12

13 D. Any submission to the FTC required by this Order to be sworn under penalty of
14 perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by
15 concluding: “I declare under penalty of perjury under the laws of the United
16 States of America that the foregoing is true and correct. Executed on:_____” and
17 supplying the date, signatory’s full name, title (if applicable), and signature.
18

19 E. Unless otherwise directed by a FTC representative in writing, all submissions to
20 the FTC pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by
21 overnight courier (not the U.S. Postal Service) to: Associate Director for
22 Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600
23 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin:
24 *FTC v. Sequoia One, et al.*
25
26
27
28

RECORDKEEPING

IX. **IT IS FURTHER ORDERED** that the Stipulating Defendant must create certain records for 10 years after entry of the Order, and retain each such record for 5 years.

Specifically, the Stipulating Defendant for any business that the Stipulating Defendant, individually or collectively with any other Defendant, is a majority owner or controls directly or indirectly, must create and maintain the following records:

- A. Proof of consumers' authorization to have their sensitive personal information transferred or disclosed, which includes the consumer's name, phone number, and address; and the manner, time, place, and method of the authorization;
- B. Accounting records showing the revenues from all goods or services sold, all costs incurred in generating those revenues, and the resulting net profit or loss;
- C. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name, addresses, and telephone numbers; job title or position; dates of service; and, if applicable, the reason for termination;
- D. Records of all consumer complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;
- E. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the FTC; and
- F. A copy of each advertisement or other marketing material.

COMPLIANCE MONITORING

X. **IT IS FURTHER ORDERED** that, for the purpose of monitoring the Stipulating Defendant's compliance with this Order, including the financial representations upon which part of the judgment was suspended and any failure to transfer any assets as required by this Order:

- A. Within 14 days of receipt of a written request from a representative of the FTC, each Stipulating Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents, for inspection and copying. The FTC is also authorized to obtain discovery, without further leave of Court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.
- B. For matters concerning this Order, the FTC is authorized to communicate directly with each Stipulating Defendant. The Stipulating Defendant must permit representatives of the FTC to interview any employee or other person affiliated with the Stipulating Defendant who has agreed to such an interview. The person interviewed may have counsel present.
- C. The FTC may use all other lawful means, including posing, through its representatives, as consumers, suppliers, or other individuals or entities, to the Stipulating Defendant or any individual or entity affiliated with the Stipulating Defendant, without the necessity of identification or prior notice. Nothing in this Order limits the FTC's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

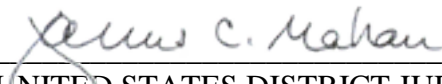
ENTRY OF JUDGMENT

XI. IT IS FURTHER ORDERED that there is no just reason for delay of entry of this judgment, and that, pursuant to Federal Rule of Civil Procedure 54(b), the Clerk immediately shall enter this Order as a final judgment as to defendant Paul McDonnell.

RETENTION OF JURISDICTION

XII. IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

IT IS SO ORDERED:


UNITED STATES DISTRICT JUDGE

DATED: August 12, 2015